

Food and Nutrition Service, USDA

§ 251.5

§ 251.4 Availability of commodities.

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(3) Establish distribution rates, based on household size, to be used by emergency feeding organizations which provide commodities to needy persons in households.

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(g) *Availability and control of donated commodities.* Donated commodities shall be made available to State agencies only for distribution and use in accordance with this part. Except as otherwise provided in § 251.4(f), donated commodities not so distributed or used for any reason shall not be sold, exchanged, or otherwise disposed of without the approval of the Department. However, donated commodities made available under section 32 of Pub. L. 74-320 (7 U.S.C. 612c) may be transferred by emergency feeding organizations, as defined in § 251.3, or recipient agencies, as defined in § 250.3, to any other emergency feeding organization or recipient agency which agrees to use such donated foods to provide without cost or waste, nutrition assistance to individuals in low-income groups. Such transfers shall be effected only with prior authorization of the State agency and, as applicable, the distributing agency. Transfers of any donated commodities between emergency feeding organizations and recipient agencies shall be documented. Such documentation shall be maintained in accordance with §§ 251.10(a) and 250.6(r) by the distributing agency and the State agency responsible for administering TEFAP and made available for review upon request.

(h) *Distribution to emergency feeding organizations.* Emergency feeding organizations shall be eligible to receive commodities which are made available under sections 202 and 214 of the Emergency Food Assistance Act of 1983. State agencies may give priority in the distribution of these commodities to existing food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households, including food from sources other than the Department.

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§ 251.5 Eligibility determinations.

(a) *Criteria for determining eligibility of organizations.* Prior to making commodities or administrative funds available, State agencies, or eligible recipient agencies to which the State agency has delegated responsibility for the distribution of TEFAP commodities or administrative funds, must ensure that

an organization applying for participation in the program meets the definition of an “eligible recipient agency” under § 251.3(d). In addition, applicant organizations must meet the following criteria:

(1) *Agencies distributing to households.* Organizations distributing commodities to households for home consumption must limit the distribution of commodities provided under this part to those households which meet the eligibility criteria established by the State agency in accordance with paragraph (b) of this section.

(2) *Agencies providing prepared meals.* Organizations providing prepared meals must demonstrate, to the satisfaction of the State agency, or eligible recipient agency to which they have applied for the receipt of commodities or administrative funds, that they serve predominantly needy persons. State agencies may establish a higher standard than “predominantly” and may determine whether organizations meet the applicable standard by considering socioeconomic data of the area in which the organization is located, or from which it draws its clientele. State agencies may not, however, require organizations to employ a means test to determine that recipients are needy, or to keep records solely for the purpose of demonstrating that its recipients are needy.

(3) *Tax-exempt status.* Private organizations must—

(i) Be currently operating another Federal program requiring tax-exempt status under the Internal Revenue Code (IRC), or

(ii) Possess documentation from the Internal Revenue Service (IRS) recognizing tax-exempt status under the IRC, or

(iii) If not in possession of such documentation, be automatically tax exempt as “organized or operated exclusively for religious purposes” under the IRC, or

(iv) If not in possession of such documentation, but required to file an application under the IRC to obtain tax-exempt status, have made application for recognition of such status and be

moving toward compliance with the requirements for recognition of tax-exempt status. If the IRS denies a participating organization's application for recognition of tax-exempt status, the organization must immediately notify the State agency or the eligible recipient agency, whichever is appropriate, of such denial, and that agency will terminate the organization's agreement and participation immediately upon receipt of such notification. If documentation of IRS recognition of tax-exempt status has not been obtained and forwarded to the appropriate agency within 180 days of the effective date of the organization's approval for participation in TEFAP, the State agency or eligible recipient agency must terminate the organization's participation until such time as recognition of tax-exempt status is actually obtained, except that the State agency or eligible recipient agency may grant a single extension not to exceed 90 days if the organization can demonstrate, to the State agency's or eligible recipient agency's satisfaction, that its inability to obtain tax-exempt status within the 180 day period is due to circumstances beyond its control. It is the responsibility of the organization to document that it has complied with all IRS requirements and has provided all information requested by IRS in a timely manner.

(b) *Criteria for determining recipient eligibility.* Each State agency must establish uniform Statewide criteria for determining the eligibility of households to receive commodities provided under this part for home consumption. The criteria must:

- (1) Enable the State agency to ensure that only households which are in need of food assistance because of inadequate household income receive TEFAP commodities;
- (2) Include income-based standards and the methods by which households may demonstrate eligibility under such standards; and
- (3) Include a requirement that the household reside in the geographic location served by the State agency at the time of applying for assistance, but length of residency shall not be used as an eligibility criterion.

(c) *Delegation of authority.* A State agency may delegate to one or more eligible recipient agencies with which the State agency enters into an agreement the responsibility for the distribution of commodities and administrative funds made available under this part. State agencies may also delegate the authority for selecting eligible recipient agencies and for determining the eligibility of such organizations to receive commodities and administrative funds. However, responsibility for establishing eligibility criteria for organizations in accordance with paragraph (a) of this section, and for establishing recipient eligibility criteria in accordance with paragraph (b) of this section, may not be delegated. In instances in which State agencies delegate authority to eligible recipient agencies to determine the eligibility of organizations to receive commodities and administrative funds, eligibility must be determined in accordance with the provisions contained in this part and the State plan. State agencies will remain responsible for ensuring that commodities and administrative funds are distributed in accordance with the provisions contained in this part.

[64 FR 72904, Dec. 29, 1999]

EFFECTIVE DATE NOTE: At 64 FR 72904, Dec. 29, 1999, § 251.5 was revised, effective Feb. 28, 2000. For the convenience of the user, the superseded text follows.

§ 251.5 Eligibility determinations.

(a) *Eligible emergency feeding organizations.* Prior to making distribution to these agencies, the State agency shall determine that they are eligible as emergency feeding organizations under this part and shall enter into agreements in accordance with § 251.2(b) of this chapter when such agreements have not already been entered into.

(b) *Criteria for determining recipient eligibility.* Each State agency shall establish criteria for determining the eligibility of households to receive commodities provided under this part for household use. The criteria must enable the State to ensure that only households who are in need of food assistance because of inadequate household income receive commodities. The criteria shall include income-based standards and the methods by which households may demonstrate eligibility under such standards and may include a requirement that the household reside in the State, provided that length of residency is not used as an eligibility criterion.